FILE COPY

SEP 5 1942

CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 358

HOOPESTON CANNING CO., A CORPORATION, E. PRITCHARD, INC., A CORPORATION, LANSING B. WARNER, INCORPORATED, A CORPORATION, HARRY M. BROWN AND JAMES T. SMITH,

Appellants,

vs.

LOUIS H. PINK, AS SUPERINTENDENT OF INSURANCE OF THE STATE OF NEW YORK, AND JOHN J. BENNETT, JR., AS ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Appellees.

HOOPESTON CANNING CO., A CORPORATION, E. PRITCHARD, INC., A CORPORATION, LANSING B. WARNER, INCORPORATED, A CORPORATION, PAUL E. EMERSON AND BEN A. MORTON,

Appellants,

vs.

LOUIS H. PINK, AS SUPERINTENDENT OF INSURANCE OF THE STATE OF NEW YORK, AND JOHN J. BENNETT, JR., AS ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW YORK.

BRIEF OPPOSING MOTION TO DISMISS OR AFFIRM.

FRANKLIN D. TRUEBLOOD,
Counsel for Appellants.

THE DARNELL-WARREN PRINTING COMPANY, 810 WEST JACKSON, CHICAGO

IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. [redacted]

HOOPESTON CANNING CO., A CORPORATION, E. PRITCHARD, INC., A CORPORATION, LANSING B. WARNER, INCORPORATED, A CORPORATION, HARRY M. BROWN AND JAMES T. SMITH,

Appellants,

vs.

LOUIS H. PINK, AS SUPERINTENDENT OF INSURANCE OF THE STATE OF NEW YORK, AND JOHN J. BENNETT, JR., AS ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Appellees.

HOOPESTON CANNING CO., A CORPORATION, E. PRITCHARD, INC., A CORPORATION, LANSING B. WARNER, INCORPORATED, A CORPORATION, PAUL E. EMERSON AND BEN A. MORTON,

Appellants,

vs.

LOUIS H. PINK, AS SUPERINTENDENT OF INSURANCE OF THE STATE OF NEW YORK, AND JOHN J. BENNETT, JR., AS ATTORNEY GENERAL OF THE STATE OF NEW YORK,

Appellees.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW YORK.

BRIEF OPPOSING MOTION TO DISMISS OR AFFIRM.

It is not disputed by the appellees that in this cause in the Court of Appeals of the State of New York there was drawn in question the validity of certain statutes of the

said state on the ground of their being repugnant to the Constitution of the United States and that the decision of the said Court of Appeals was in favor of validity. The questions involved being substantial, as the Jurisdictional Statement on file herein shows, this appeal was properly taken under Section 237(a) of the Judicial Code and the Rules of this Court.

Home Insurance Co. v. *Dick*, 281 U. S. 397, 405.
New York Life Insurance Co. v. *Head*, 234 U. S. 149, 159, 160.
Dahnke-Walker Milling Co. v. *Bondurant*, 257 U. S. 282, 290.

The appellees contend that since the courts below found certain facts from which the inference of jurisdiction in the New York Legislature to regulate appellants' contracts is said to arise, under the doctrine of *Whitney* v. *California*, 274 U. S. 357, the appellants are precluded from raising the constitutional issues in this Court. But it is axiomatic that conclusions of state courts as to mixed questions of law and fact may never be invoked to deprive suitors of rights guaranteed by the federal constitution.

First National Bank v. *Hartford*, 273 U. S. 548, 552, 553.
Aetna Life Insurance Co. v. *Dunken*, 266 U. S. 389, 394.
Fiske v. *Kansas*, 274 U. S. 380.

This appeal does not present a mere case of construction of a state statute by a state court, as the appellees intimate. The question here is whether the challenged statutes as construed by the Court of Appeals and applied to the facts of this case are repugnant to the federal constitution.

Home Insurance Co. v. *Dick*, 281 U. S. 397, 405-407.
Hanover Insurance Co. v. *Harding*, 272 U. S. 494, 509.
Dahnke-Walker Milling Co. v. *Bondurant*, 257 U. S. 282, 290.
Dorchy v. *Kansas*, 272 U. S. 306, 308, 309.

The Trial Court, in holding certain of the challenged statutes violative of the equal protection and due process clauses, awarded the appellants partial relief. Both sides appealed to the Appellate Division of the Supreme Court, Third Department, which Court sustained appellants' appeal to the fullest extent. The Court of Appeals reversed. In its decision the said Court failed to mention a single case in this Court, although the relevant Supreme Court authorities were cited in the briefs. The division of opinion in the courts below amounts to a determination that the questions involved in this appeal are substantial federal questions deserving review.

Louisville & Nashville Railroad Co. v. *Melton*, 218 U. S. 36, 49.

Irving Trust Co. v. *Day*, 314 U. S. 556.

Alton R. Co. v. *Illinois Commerce Commission*, 305 U. S. 548, 550.

Respectfully submitted,

FRANKLIN D. TRUEBLOOD,
Counsel for Appellants.